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June 8, 2020

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Magistrate Judge Susan van Keulen
United States District Court
280 South 1st Street
Courtroom 6, 4th Fl.
San Jose, CA 95113

Re: Neo4j, Inc. v. Graph Foundation Inc. – Discovery Deficiencies in Responses to Interrogatory Set 1, Case No.: 3:19-cv-06226-EJD

On April 22, 2020, Defendant Graph Foundation Inc. (“GFI”) served its responses to Neo4j’s Interrogatory Set 1 (“ROGs”), which sought information relevant to its Lanham Act claims and several of GFI’s defenses thereto. On April 27, 2020, counsel for Plaintiff Neo4j, Inc. (“Neo4j”) sent counsel for GFI a meet and confer letter detailing the deficiencies in GFI’s responses. Counsel for the parties thereafter met and conferred by telephone to attempt to resolve the issues raised and were unable to resolve the instant dispute. GFI’s supplemental responses, served on May 28, did not address the issues in this motion. See **Exhibit A**. The parties have concurrently filed a joint statement regarding GFI’s deficiencies to Neo4j’s Requests for Production Set 1, which cover overlapping subject matter with the requests in this motion.

1. **Close of Discovery and Trial Date:** Close of fact discovery for issues relating to Neo4j’s Lanham Act claims and GFI’s defenses thereto is August 14, 2020. A trial date has not been set. This case schedule also applies to the earlier filed case *Neo4j, Inc. v. PureThink, LLC et al.*, which is now related with the case against GFI based on the common nucleus of operative claims, facts, and witnesses. See Dkt. Nos. 21, 68 in Related Case.

2. **Description of Unresolved Discovery Issues:** On March 2, 2020, Neo4j served its ROGs. Neo4j granted GFI two extensions giving it three 3 additional weeks to respond. Neo4j contends GFI’s responses fail to provide the complete and accurate information available to GFI, including answers which demonstrably contradict the undisputed facts, and constitute a failure to answer under Fed. R. Civ. Proc. 37. GFI also gives evasive answers referring to documents en masse, and fails to identify the complete and independently acquired factual basis, documents, or witnesses for its affirmative defenses.

3. **Neo4j’s Position:** A responding party is obligated to respond to the interrogatories to the fullest extent possible, and any objections must be stated with specificity. Fed. R. Civ. P. 33(b)(3). ROGs 2, 5-10, 13, and 16-18, 20 and how GFI’s response to each is deficient is addressed in detail below.

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GFI's Failure to Provide All Information Within its Possession, Custody or Control

In several of its responses, GFI either failed to provide all the information available to it and/or failed to completely answer the entirety of the interrogatory. Specifically:

ROG 2 seek facts and documents concerning the conception, creation, and development of GFI's software product, Open Native Graph Database (ONgDB) that Neo4j accuses GFI as deceptively marketing as a "drop-in replacement" for NEO4J® Enterprise Edition software. GFI's only response that "individuals with knowledge of ONgDB are Brad Nussbaum and Ben Nussbaum" is incomplete because it does not address the first part of interrogatory seeking ONgDB's "conception, creation, and development". This information is relevant to, inter alia, the genesis of ONgDB, including whether its conception may have encompassed infringing code and/or intent, including evidence in support of Neo4j's false advertising claim that ONgDB is allegedly a "drop-in" replacement for Neo4j's software. During meet and confer, GFI claimed to not understand "conception, creation, and development." Such an objection lacks merit because GFI is obligated to exercise common sense and attribute ordinary definitions to such terms. *Bryant v. Armstrong*, 285 F.R.D. 596 (S.D. Cal. 2012); *see also Haney v. Saldana*, 2010 WL 3341939 at *3 (E.D. Cal. Aug. 24, 2010) (The responding party shall use common sense and reason in its responses; hyper-technical, quibbling, or evasive objections will not be viewed favorably by the court). Additionally, under Civ. R. 37(a)(4), "an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer or respond."

ROG 5 seek facts concerning John Mark Suhy's role in the inception, formation and operation of GFI. GFI's response "[n]one" is patently false as it is widely known, through statements made by Suhy and GFI, that Suhy was instrumental, if not the mastermind behind GFI's formation. Notably, Mr. Suhy was previously listed as a board member on GFI's website and Neo4j has proffered emails showing Suhy and the Nussbaums discussing forming GFI. See Table of Exhibits¹, **Exhs. 1, 3, 5**. GFI objected to the terms "role" and "all material facts" as vague and unintelligible. GFI's unreasonable inaccuracies cannot be squared with its direct knowledge of Suhy's hands-on involvement with GFI. *See Fresenius Medical Care Holding Inc. v. Baxter International, Inc.*, 224 F.R.D. 644, 651 (N.D. Cal. 2004) ("When responding to interrogatories, a party has a duty to respond with all the information under its custody and control").

ROG 6, 7, 8, and 9 seeks facts concerning GFI's relationship with iGov, AtomRain, GraphGrid and GrapheneDB. GFI responded "None" to 6, 8, and 9. For 7, GFI's response is incomplete as it makes no mention of GraphGrid as a financial sponsor even though they are listed on GFI's website as one. See **Exh. 2**. The same concerns as ROG 5 apply here. Suhy through PureThink, and subsequently iGov, persuaded government agencies to purchase ONgDB, and to obtain support services through entities also founded by either Suhy or the Nussbaums, such as AtomRain and GraphGrid who are major financial backers of GFI. iGov is a "Targeted Sponsor"². GrapheneDB

¹ Table of Exhibits filed concurrently with parties' Joint Statement regarding Neo4j's Request for Production, Set 1.

² <https://www.graphfoundation.org/support/thanks/>. (iGov is a "GF Targeted Sponsors" which provides GFI "with contributions for specific activities, programs projects, such as donating cloud services, funding a project engineer, providing legal services, offering a community member benefit, or something entirely new. It's the Graph Foundation

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provides support services to ONgDB users. See Supplemental Response to ROG 15. These related entities have common founders and are in the business of supporting GFI's ONgDB. GFI's response is patently incorrect.

ROG 10 seeks information about the identity of GFI's customer base. Customer information is relevant to evidence of consumer confusion, Neo4j's lost profits, and disgorgement of GFI's profits. GFI's responded that it "does not collect or maintain the information sought in this interrogatory." GFI produced documents showing discussion with actual or potential customers of ONgDB and the identity of these prospects are responsive at a minimum. Moreover, GFI's tracking of the number of downloads of its product suggests it has information about its user base that is readably ascertainable and responsive to this request.³

ROG 16 seeks information about GFI's support documentation that may have infringed Neo4j's mark, the author(s) of that documentation, and the copyright holder of such documentation and any permission or license given to GFI the right to use such documentation. GFI's response is incomplete as it did not answer who the author(s) and copyright holders of the documentation were, and what permission, if any, GFI was given to use the documentation.

GFI Cannot Refer to a Mass of Documents – Interrogatory Responses Must Be Complete In Itself

ROGs 13 and 20 seek aspects of GFI's own source code, including what code purportedly differentiates ONgDB from Neo4j's software, which goes to Neo4j's infringement and false advertising claims. GFI's response refers to general webpages on the Internet without identification of actual source code files. Neo4j can only guess as to what information on these voluminous websites—all under GFI's control—is responsive. These responses are non-responsive, incomplete, and evasive. *Gaeta v. Perrigo Pharmaceuticals Co.*, 2007 WL 3343043 *4 (N.D.Cal. Nov.9, 2007) ("An interrogatory response should be complete and not refer to other pleadings or documents.")

Each of these interrogatories seeks information that GFI is familiar with – its own product, ONgDB, and its own source code. GFI knows where and how its code is functionally different from Neo4j's product, if at all. GFI has a duty to review and provide this information under its control and it can do so in ways that Neo4j cannot. *T.N. Taube Corp. v. Marine Midland Mortg. Corp.*, 136 FRD 449, 454 (WD NC 1991) (responding party's familiarity with its records and methods of organization would facilitate review of records in ways unavailable to opposing party).

way of recognizing the sponsors that we rely on every day outside of and often in addition to funding our general operations.")

³ <https://www.graphfoundation.org/1000th-ongdb-open-neo4j-enterprise-3-5-download-iequoh3ja/> ("We are excited to announce today that we have reached our 1,000th download of ONgDB 3.5, the Open Native Graph Database project!")

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GFI's Failure To Fully Identify the Factual Basis Underlying Its Affirmative Defenses

ROGs 17 and 18 seek the factual basis supporting GFI's affirmative defense of Unclean Hands and Fair Use respectively, and the persons and documents that support these defenses. For Unclean Hands, GFI recites conclusory allegations, and actually contains even less allegations that the content of its Amended Answer. (Dkt. No. 31 at 5:16-6:20). For Fair Use, GFI copies entirely from its pleading without reciting any additional or actual facts.

Neo4j is entitled to a full and complete response based on information that GFI obtained through a reasonable inquiry. Instead, GFI admittedly has only copied allegations from the Related Case without any independent knowledge of the underlying facts. *Profile Publishing & Management Corp. APS v. Musicmaker.com, Inc.*, 242 F. Supp. 2d 363, (S.D.N.Y. Jan. 24, 2003) (awarding sanctions where defendant's counsel failed to make reasonable inquiry into affirmative defenses). GFI also fails to identify any documents or person(s) with knowledge that support its defenses. This too falls short of what is requested.

Neo4j's Compromise: Neo4j proposes that GFI amend its responses to provide full, unequivocal, and complete responses from all sources within its control. To the extent GFI does not possess any additional responsive information, it must state, via declarations from the Nussbaums, that they have conducted a diligent search and reasonable inquiry, including the sources and custodians they sought information from.

GFI's Position:

ROG 2 is Overbroad and Unintelligible: ROG 2 asks GFI to state "all material facts" and identify "all documents" concerning the development of the ONgDB. GFI properly objected to ROG 2 on the ground that it is overbroad, unduly burdensome and its use of the terms "all material facts" and "development" render it vague, ambiguous and unintelligible. GFI is unable to determine what information would be responsive to this interrogatory. This is not a hyper sensitive reading of the interrogatory. While a request for "all material facts" supporting a party's contention can be appropriate (if served after an opportunity for discovery), this request for "all material facts" relating to the development of a software product is unintelligible and the request to identify all documents that might be related to that development is overbroad, unduly burdensome and oppressive. Moreover, the issue of the development of ONgDB is not relevant to this action. Nevertheless, GFI identified the two individuals with knowledge of the development of ONgDB and would be willing to produce for deposition a person most knowledgeable with respect to the development of ONgDB which will enable Neo4j to ask questions with respect to the aspects of ONgDB's development that it deems material.

GFI has Answered ROGS 5-9 Subject to Donor Privacy Objections: Neo4j's complaint with respect to GFI's answer to ROG 5 is that Neo4j disagrees with GFI's answer. That is not a proper basis for a motion to compel. *See, e.g., Bradford v. Owens*, 2014 U.S. Dist. LEXIS 95945 *5-6 (W.D. Ky. July 14, 2014); *Grant v. Target Corp.*, 2013 U.S. Dist. LEXIS 136652 *9 ("[A] motion to compel is not the correct way for [plaintiff] to argue about the factual accuracy of [defendant's] responses.") As for ROGs 6-9, the only difference is that GFI did withhold information about donor relationships because of its donor's right to privacy. There is no governmental interest that would be served by the

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release of that information because donor information is entirely irrelevant to Neo4j's claims against GFI (and is also not relevant to the claims in the Related Case). *See, e.g., Ctr. for Competitive Politics v. Harris*, 784 F.3d 1307, 1317 (9th Cir. 2015) (weighing chilling effect of disclosure of donors against interest of Attorney General in policing non-profit organizations). Except as to donor information, GFI provided its responses to these interrogatories and Neo4j's only complaint is that it disagrees with the answers.

GFI Answered ROG 10: Again, Neo4j disagrees with GFI's answer to ROG 10, claiming that GFI has information it does not have. The email communications that GFI had with potential users of ONgDB do not provide the information requested in the interrogatory. As GFI has explained to Neo4j, the information on the number of downloads was obtained from DockerHub, a third-party that tracks open source downloads. *See* <https://hub.docker.com/r/graphfoundation/ongdb>

GFI Has Sufficiently Answered ROG 16: GFI's response to ROG 16 provides links to the very documents Neo4j is requesting that GFI identify. Neo4j is equally able to review those documents and obtain any information from them as it deems relevant. The primary website listed, <https://github.com/graphfoundation/ongdb/wiki/ONgDB-3.6-Docs>, is a wiki page which is open to public comment and editing. The interrogatory's request for author and license information does not make sense in the context of the nature of the documentation and also is unduly burdensome and oppressive in that the burden of compiling that information is significant and the information is of no relevance to Neo4j's trademark claims.

GFI Has Sufficiently Answered ROG 13: ROG 13 asks for the identity of source code files. The links provided in response are links to the folders on the github.com site that contain the responsive source code files. Neo4j's counsel is well aware of this. Moreover, the websites are where opensource software files are available for download and are not "controlled" by GFI.

ROG 20 Seeks Irrelevant Information and is Unduly Burdensome and Oppressive: This is a trademark infringement action. The question of what is within the ONgDB source code is not relevant and asking GFI to compile all of the different changes that have been made since the original forking is overbroad and unduly burdensome. Moreover, as stated in the response, all of the information with respect to changes in ONgDB are available in the history that is posted on the referenced website.

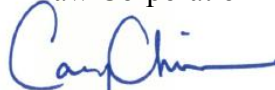
ROGs 17 and 18 are Premature Contention Interrogatories: ROGs 17 and 18 ask GFI to identify the facts and documents supporting its affirmative defenses. GFI has not had the opportunity to complete its discovery in this matter. Indeed, with respect to ROG 18, GFI does not know what incidences of its use of Neo4j's trademark are contended by Neo4j to not be a fair use. With respect to the affirmative defense of unclean hands, as stated in the response, GFI's sole current source of information are the allegations in the Related Action and GFI has not had the opportunity to complete its discovery with respect to the basis of those allegations. *Profile Publishing* does not have any relevance to this discovery motion as it concerned sanctions following an unopposed motion for summary judgment. Pursuant to Rule 33(a)(2), GFI should be given the opportunity to conduct

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discovery with respect to these issues and then supplement its responses based on the evidence obtained through that process.

Sincerely,

HOPKINS & CARLEY
A Law Corporation

A handwritten signature in blue ink, appearing to read "Cary Chien", is written over the printed name.

Cary Chien

Exhibit A

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GRAPH FOUNDATION, INC.
6
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 NEO4J, INC., a Delaware corporation,

12 Plaintiff,

13 v.

14 GRAPH FOUNDATION, INC., an Ohio
corporation,

15 Defendant.
16

Case No. 5:19-cv-06226-EJD

**GRAPH FOUNDATION, INC.'S
SUPPLEMENTAL OBJECTIONS AND
RESPONSES TO NEO4J, INC.'S FIRST
SET OF INTERROGATORIES**

Judge: Hon. Edward J. Davila
Crtrm.: 4, 5th Fl.

Complaint Filed: October 1, 2019

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19 PROPOUNDING PARTY: Plaintiff NEO4J, INC.

20 RESPONDING PARTY: Defendant GRAPH FOUNDATION, INC.

21 SET NO.: One (1)
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1 Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant GRAPH
2 FOUNDATION, INC. (“GFI”) hereby supplements its response to Plaintiff NEO4J, INC.’s
3 (“Neo4j”) First Set of Interrogatories (the “Interrogatories”) as follows:

4 **PRELIMINARY STATEMENT**

5 The following responses are made solely for the purpose of, and in relation to, this action.
6 Each response is provided subject to all appropriate objections (including, without limitation,
7 objections concerning competency, relevancy, materiality, propriety, and admissibility) that would
8 require the exclusion of any statement contained herein if the statement were made by a witness
9 present and testifying in court. All such objections and grounds therefore are reserved and may be
10 interposed at the time of trial.

11 The following responses are based on the facts and information presently known and
12 available to GFI. Discovery, investigation, research, and analysis are still ongoing in this case and
13 may disclose the existence of additional facts, add meaning to known facts, establish entirely new
14 factual conclusions or legal contentions, or possibly lead to additions, variations, or changes to
15 these responses. Without being obligated to do so, GFI reserves the right to change or supplement
16 these responses as additional facts are discovered, revealed, recalled, or otherwise ascertained, and
17 as further analysis and research disclose additional facts, contentions or legal theories which may
18 apply.

19 **GENERAL OBJECTIONS**

20 1. GFI objects to the Interrogatories in their entirety, and to each individual
21 interrogatory therein, to the extent that they purport to require GFI to provide information
22 concerning persons or entities other than GFI, on the grounds that the Interrogatories, to that
23 extent, are overbroad and seek information that is neither relevant to the subject matter of this
24 Action nor reasonably calculated to lead to the discovery of admissible evidence, or if relevant, so
25 remote therefrom as to make their disclosure of little or no practical benefit to Neo4j, while
26 placing an unwarranted and extreme burden and expense on GFI in ascertaining, gathering and
27 providing such information.

28 2. GFI objects to the Interrogatories in their entirety and to each individual

1 interrogatory therein, to the extent that they seek information that is not relevant and does not
2 appear reasonably calculated to lead to the discovery of admissible evidence.

3 3. GFI objects to the Interrogatories in their entirety and to each individual
4 interrogatory therein, to the extent that they purport to require GFI to provide information that is
5 not within its possession, custody, or control.

6 4. GFI objects to the Interrogatories in their entirety, and to each individual
7 interrogatory therein, to the extent they purport to require GFI to provide information that has
8 already been provided by parties in this Action, or that could be provided by parties to this Action,
9 or non-parties.

10 5. GFI objects to the Interrogatories in its entirety and to each individual interrogatory
11 therein, to the extent that they are vague, ambiguous, and/or overbroad.

12 6. GFI objects to the Interrogatories in its entirety and to each individual interrogatory
13 therein, to the extent that they purport to require GFI to provide confidential business, financial,
14 proprietary, or sensitive information.

15 7. GFI objects to the Interrogatories in their entirety, and to each individual
16 interrogatory therein, to the extent they seek information prepared in anticipation of, or in
17 connection with this Action, or information protected from disclosure by the attorney-client
18 privilege, the attorney work-product doctrine, or any other applicable privilege against disclosure.

19 8. GFI objects to the Definitions set forth in the Interrogatories to the extent that such
20 definitions purport to impose requirements on GFI which differ from those set forth set forth in the
21 Code of Civil Procedure.

22 9. GFI objects to the Definitions set forth in the Interrogatories to the extent that the
23 definitions of the stated terms or phrases assume facts not in evidence or otherwise improperly or
24 incorrectly define the stated terms or phrases.

25 10. GFI objects to the Definitions set forth in the Interrogatories to the extent that such
26 definitions result in the Interrogatories being improperly compound and/or containing subparts in
27 violation of Section 2030.060(f) of the Code of Civil Procedure.

28 11. The foregoing General Objections are, and shall be deemed to be, incorporated in

1 full into each specific Interrogatory Response set forth below.

2 **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

3 1. GFI objects to “Instructions” and “Definitions” contained in the Interrogatories, to
4 the extent that they are inconsistent with and/or seek to impose obligations beyond those imposed
5 by the Federal Rules of Civil Procedure and the Local Civil Rules.

6 2. GFI adopts the definitions used in the Interrogatories solely for the purpose of
7 responding to the Interrogatories, and not for any other purpose.

8 3. GFI objects to the terms “GFI,” “YOU,” and “YOUR” to the extent that it includes
9 “all individuals and/or entities acting on its behalf, including but not limited to all employees,
10 attorneys, agents, advisors, representatives, subsidiaries, parents, affiliates, successors,
11 predecessors, or assigns” as they render the requests vague and ambiguous, overbroad, and unduly
12 burdensome and oppressive.

13 4. GFI objects to the term “PLAINTIFF” or “NEO4J” to the extent that it includes
14 “all individuals and/or entities acting on its behalf, including but not limited to all employees,
15 attorneys, agents, advisors, representatives, subsidiaries, parents, affiliates, successors,
16 predecessors, or assigns” as it renders the requests vague and ambiguous, overbroad, and unduly
17 burdensome and oppressive.

18 5. GFI objects to the term “PLAINTIFF’S MARK” or the “NEO4J MARK” to the
19 extent that it includes “all individuals and/or entities acting on its behalf, including but not limited
20 to all employees, attorneys, agents, advisors, or representatives,” as it renders the requests vague
21 and ambiguous, overbroad, and unduly burdensome and oppressive.

22 6. GFI objects to the term “NEO4J SOFTWARE” to the extent that it includes “all
23 individuals and/or entities acting on its behalf, including but not limited to all employees,
24 attorneys, agents, advisors, or representatives,” as it renders the requests vague and ambiguous,
25 overbroad, and unduly burdensome and oppressive.

26 7. The foregoing General Objections are, and shall be deemed to be, incorporated in
27 full into each specific interrogatory response set forth below.

28

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

IDENTIFY all material facts and DOCUMENTS describing each and every instance of which YOU are aware in which any person has been in any way confused, mistaken, or deceived as to the origin, or sponsorship of any goods or services sold, provided or offered for sale under or in connection with Open Native Graph Database (ONgDB) or Neo4j Government Edition, and the three (3) persons most knowledgeable about such facts.

RESPONSE TO INTERROGATORY NO. 1:

GFI incorporates by reference the Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above.

GFI further objects to this interrogatory on the grounds that its use of the terms “in any way confused, mistaken or deceived”, “origin, or sponsorship” render it vague, ambiguous and unintelligible. GFI further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, or another privilege.

Subject to and without waiving the foregoing objections, GFI responds as follows: GFI has no knowledge of any such instance.

INTERROGATORY NO. 2:

IDENTIFY all material facts and DOCUMENTS concerning the conception, creation, and development of Open Native Graph Database (ONgDB), and the five (5) persons most knowledgeable about such facts.

RESPONSE TO INTERROGATORY NO. 2:

GFI incorporates by reference the Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above.

GFI further objects to this interrogatory on the grounds that it is vague, ambiguous, unintelligible, overbroad and unduly burdensome. GFI further objects to this interrogatory on the grounds that its use of the term “all material facts and DOCUMENTS concerning” renders it vague, ambiguous, and unintelligible. GFI further objects to this request on the grounds that its use of the term “development” in the context of ONgDB renders the interrogatory vague,

1 ambiguous and unintelligible. GFI further objects to this interrogatory to the extent it seeks
2 information that is subject to the attorney-client privilege, the attorney work product doctrine, or
3 some other privilege.

4 Subject to and without waiving the foregoing objections, GFI responds that individuals
5 with knowledge of ONgDB are Brad Nussbaum and Ben Nussbaum.

6 **INTERROGATORY NO. 3:**

7 IDENTIFY all websites, discussion forum accounts, Twitter accounts, Facebook accounts,
8 Instagram accounts, and other social media accounts that are owned, operated, or controlled by YOU,
9 and the PERSONS who were or are responsible for or participating in, the creation and development of
10 each and content therewith.

11 **RESPONSE TO INTERROGATORY NO. 3:**

12 GFI incorporates by reference the Preliminary Statement, General Objections, and
13 Objections to Instructions and Definitions stated above.

14 GFI further objects to this interrogatory on the grounds that it is vague, ambiguous,
15 unintelligible, overbroad and unduly burdensome. GFI further objects to this interrogatory to the
16 extent it seeks information that is subject to the attorney-client privilege, the attorney work
17 product doctrine, or some other privilege.

18 Subject to and without waiving the foregoing objections, GFI responds as follows:
19 www.graphfoundation.org and the GFI Twitter account (<https://twitter.com/GraphFoundation>);
20 Brad Nussbaum.

21 **INTERROGATORY NO. 4:**

22 IDENTIFY all material facts concerning the formation of Graph Foundation, Inc. and the
23 opportunities in the marketplace that the company was formed to take advantage of, and the five (5)
24 persons most knowledgeable about such facts.

25 **RESPONSE TO INTERROGATORY NO. 4:**

26 GFI incorporates by reference the Preliminary Statement, General Objections, and
27 Objections to Instructions and Definitions stated above.

28 GFI further objects to this interrogatory on the grounds that it seeks information that is

1 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI
 2 further objects to this interrogatory on the grounds that it is compound. GFI further objects to this
 3 request on the ground that it is vague, ambiguous, unintelligible, overbroad and unduly
 4 burdensome. GFI further objects to this interrogatory to the extent it seeks information subject to
 5 the attorney-client privilege, the attorney work product doctrine, or some other doctrine or
 6 privilege.

7 Subject to and without waiving the foregoing objections, GFI responds as follows: GFI is
 8 a non-profit corporation incorporated under the laws of the State of Ohio. The mission of GFI is
 9 to further, at no charge, the Open Source development and distribution of graph technology in the
 10 areas of software, storage, networking, clustering, parallel and distributed computation, query
 11 processing, analytics, visualization, machine learning, artificial intelligence and cloud
 12 accessibility, while serving the community with mentoring, leadership and vision for a healthy
 13 graph ecosystem. Brad Nussbaum.

14 **INTERROGATORY NO. 5:**

15 IDENTIFY all material facts concerning John Mark Suhy's role in the inception, formation
 16 and operation of Graph Foundation, Inc.

17 **RESPONSE TO INTERROGATORY NO. 5:**

18 GFI incorporates by reference the Preliminary Statement, General Objections, and
 19 Objections to Instructions and Definitions stated above.

20 GFI further objects to this interrogatory on the grounds that it seeks information that is
 21 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI
 22 further objects to this interrogatory on the ground that its use of the terms "all material facts" and
 23 "role" renders it vague, ambiguous and unintelligible. GFI further objects to this interrogatory to
 24 the extent it seeks information that is subject to the attorney-client privilege or the attorney work
 25 product doctrine.

26 Subject to and without waiving the foregoing objections, GFI responds as follows: None.

27 **INTERROGATORY NO. 6:**

28 IDENTIFY all material facts concerning YOUR relationship with iGov Inc. and all

1 DOCUMENTS reflecting or governing that relationship, including all oral or written agreements.

2 **RESPONSE TO INTERROGATORY NO. 6:**

3 GFI incorporates by reference the Preliminary Statement, General Objections, and
4 Objections to Instructions and Definitions stated above.

5 GFI further objects to this interrogatory on the grounds that it seeks information that is
6 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI
7 further objects to this interrogatory on the ground that its use of the terms “all material facts” and
8 “relationship” renders it vague, ambiguous and unintelligible. GFI further objects to this
9 interrogatory to the extent it includes being a donor to GFI a “relationship” on the grounds that
10 information about GFI’s donors are subject to the donors’ right of privacy and are irrelevant and
11 not reasonably calculated to lead to the discovery of admissible evidence. GFI will not provide
12 information identifying donors in response to any interrogatory. GFI further objects to this
13 interrogatory to the extent it seeks information that is subject to the attorney-client privilege or the
14 attorney work product doctrine.

15 Subject to and without waiving the foregoing objections, GFI responds as follows: None.

16 **INTERROGATORY NO. 7:**

17 IDENTIFY all material facts concerning YOUR relationship with GraphGrid, Inc. and all
18 DOCUMENTS reflecting or governing that relationship, including all oral or written agreements.

19 **RESPONSE TO INTERROGATORY NO. 7:**

20 GFI incorporates by reference the Preliminary Statement, General Objections, and
21 Objections to Instructions and Definitions stated above.

22 GFI further objects to this interrogatory on the grounds that it seeks information that is
23 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI
24 further objects to this interrogatory on the ground that its use of the terms “all material facts” and
25 “relationship” renders it vague, ambiguous and unintelligible. GFI further objects to this
26 interrogatory to the extent it includes being a donor to GFI a “relationship” on the grounds that
27 information about GFI’s donors are subject to the donors’ right of privacy and are irrelevant and
28 not reasonably calculated to lead to the discovery of admissible evidence. GFI will not provide

1 information identifying donors in response to any interrogatory. GFI further objects to this
2 interrogatory to the extent it seeks information that is subject to the attorney-client privilege or the
3 attorney work product doctrine.

4 Subject to and without waiving the foregoing objections, GFI responds as follows:
5 GraphGrid, Inc. provides web hosting and cloud services for the GFI website and binary
6 distribution. The documentation was GFI's signing up through the GraphGrid, Inc. website:
7 <https://go.graphgrid.com>.

8 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7:**

9 GFI incorporates by reference the Preliminary Statement, General Objections, and
10 Objections to Instructions and Definitions stated above.

11 GFI further objects to this interrogatory on the grounds that it seeks information that is
12 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI
13 further objects to this interrogatory on the ground that its use of the terms "all material facts" and
14 "relationship" renders it vague, ambiguous and unintelligible. GFI further objects to this
15 interrogatory to the extent it includes being a donor to GFI a "relationship" on the grounds that
16 information about GFI's donors are subject to the donors' right of privacy and are irrelevant and
17 not reasonably calculated to lead to the discovery of admissible evidence. GFI will not provide
18 information identifying donors in response to any interrogatory. GFI further objects to this
19 interrogatory to the extent it seeks information that is subject to the attorney-client privilege or the
20 attorney work product doctrine.

21 Subject to and without waiving the foregoing objections, GFI responds as follows:
22 GraphGrid, Inc. provides web hosting and cloud services for the GFI website and binary
23 distribution. The documentation was GFI's signing up through the GraphGrid, Inc. website:
24 <https://go.graphgrid.com>. A copy of GraphGrid, Inc.'s Customer Agreement which governs its
25 customer relationships and which is available at graphgrid.com/agreement/ is attached hereto as
26 Exhibit 1.

1 **INTERROGATORY NO. 8:**

2 IDENTIFY all material facts concerning YOUR relationship with AtomRain, Inc. and all
3 DOCUMENTS reflecting or governing that relationship, including all oral or written agreements.

4 **RESPONSE TO INTERROGATORY NO. 8:**

5 GFI incorporates by reference the Preliminary Statement, General Objections, and
6 Objections to Instructions and Definitions stated above.

7 GFI further objects to this interrogatory on the grounds that it seeks information that is
8 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI
9 further objects to this interrogatory on the ground that its use of the terms “all material facts” and
10 “relationship” renders it vague, ambiguous and unintelligible. GFI further objects to this
11 interrogatory to the extent it includes being a donor to GFI a “relationship” on the grounds that
12 information about GFI’s donors are subject to the donors’ right of privacy and are irrelevant and
13 not reasonably calculated to lead to the discovery of admissible evidence. GFI will not provide
14 information identifying donors in response to any interrogatory. GFI further objects to this
15 interrogatory to the extent it seeks information that is subject to the attorney-client privilege or the
16 attorney work product doctrine.

17 Subject to and without waiving the foregoing objections, GFI responds as follows: None.

18 **INTERROGATORY NO. 9:**

19 IDENTIFY all material facts concerning YOUR relationship with GrapheneDB Labs S.L. and
20 all DOCUMENTS reflecting or governing that relationship, including all oral or written agreements.

21 **RESPONSE TO INTERROGATORY NO. 9:**

22 GFI incorporates by reference the Preliminary Statement, General Objections, and
23 Objections to Instructions and Definitions stated above.

24 GFI further objects to this interrogatory on the grounds that it seeks information that is
25 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI
26 further objects to this interrogatory on the ground that its use of the terms “all material facts” and
27 “relationship” renders it vague, ambiguous and unintelligible. GFI further objects to this
28 interrogatory to the extent it includes being a donor to GFI a “relationship” on the grounds that

1 information about GFI's donors are subject to the donors' right of privacy and are irrelevant and
2 not reasonably calculated to lead to the discovery of admissible evidence. GFI will not provide
3 information identifying donors in response to any interrogatory. GFI further objects to this
4 interrogatory to the extent it seeks information that is subject to the attorney-client privilege or the
5 attorney work product doctrine.

6 Subject to and without waiving the foregoing objections, GFI responds as follows: None.

7 **INTERROGATORY NO. 10:**

8 IDENTIFY each person and entity who download a copy of Open Native Graph Database
9 (ONgDB) software, the version number, the person or entity who downloaded it, and IP Address for
10 each such download.

11 **RESPONSE TO INTERROGATORY NO. 10:**

12 GFI incorporates by reference the Preliminary Statement, General Objections, and
13 Objections to Instructions and Definitions stated above.

14 GFI further objects to this request on the grounds that it is overbroad, unduly burdensome
15 and oppressive. GFI further objects to this request on the grounds that it seeks information that is
16 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

17 Subject to and without waiving the foregoing objections, GFI responds as follows: GFI
18 does not collect or maintain the information sought in this interrogatory.

19 **INTERROGATORY NO. 11:**

20 IDENTIFY each and every charitable donation and contribution made to Graph Foundation,
21 Inc., including the nature and type of donation (i.e., money, goods, services, personal property, real
22 property, intellectual property, source code, vehicles, clothes, household items), the amount of the
23 donation, the fair market value ascribed to the donation, the date of the donation, and the person or
24 entity who made each such donation.

25 **RESPONSE TO INTERROGATORY NO. 11:**

26 GFI incorporates by reference the Preliminary Statement, General Objections, and
27 Objections to Instructions and Definitions stated above.

28 GFI further objects to this interrogatory on the grounds that it seeks information that is

1 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI
 2 further objects to this request on the grounds that it seeks information that is subject to the right of
 3 privacy GFI's donors. Based on these objections, GFI will not provide any information in
 4 response to this interrogatory.

5 **INTERROGATORY NO. 12:**

6 IDENTIFY each COMMUNICATION where YOU represented that a particular version
 7 number of ONgDB is equivalent or provides the same functions and features as the same version
 8 number of Neo4j® Enterprise Edition software and each person to whom that was communicated

9 **RESPONSE TO INTERROGATORY NO. 12:**

10 GFI incorporates by reference the Preliminary Statement, General Objections, and
 11 Objections to Instructions and Definitions stated above.

12 GFI further objects to this interrogatory on the grounds that its use of the terms
 13 "represented" and "equivalent or provides the same functions and features" renders it vague,
 14 ambiguous and unintelligible. GFI further objects to this request on the ground that it seeks a
 15 compilation of documents as to which the burden would be the same for Plaintiff as for GFI. GFI
 16 further objects to this request to the extent it seeks information subject to the attorney-client
 17 privilege, the attorney work product doctrine or any other privilege.

18 Subject to and without waiving the foregoing objections, GFI responds as follows: GFI
 19 has undertaken a diligent search and reasonable inquiry to search for responsive communications
 20 discussing the capabilities of ONgDB 3.5 and will produce any non-privileged responsive
 21 communications that it identifies.

22 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:**

23 GFI incorporates by reference the Preliminary Statement, General Objections, and
 24 Objections to Instructions and Definitions stated above.

25 GFI further objects to this interrogatory on the grounds that its use of the terms
 26 "represented" and "equivalent or provides the same functions and features" renders it vague,
 27 ambiguous and unintelligible. GFI further objects to this request on the ground that it seeks a
 28 compilation of documents as to which the burden would be the same for Plaintiff as for GFI. GFI

1 further objects to this request to the extent it seeks information subject to the attorney-client
2 privilege, the attorney work product doctrine or any other privilege.

3 Subject to and without waiving the foregoing objections, GFI responds as follows: GFI
4 has undertaken a diligent search and reasonable inquiry to search for responsive communications
5 discussing the capabilities of ONgDB 3.5 and has produced the following communications that
6 include within them discussions referring to the capabilities of ONgDB 3.5: GFI000068,
7 GFI000071, GFI000074-75, GFI000080, GFI000119, GFI000127.

8 **INTERROGATORY NO. 13:**

9 IDENTIFY each source code file in each version of Open Native Graph Database (ONgDB)
10 that YOU contend is covered by the GNU Affero General Public License (AGPL) version 3.

11 **RESPONSE TO INTERROGATORY NO. 13:**

12 GFI incorporates by reference the Preliminary Statement, General Objections, and
13 Objections to Instructions and Definitions stated above.

14 GFI further objects to this interrogatory on the grounds that it seeks information that is
15 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI
16 further objects to this interrogatory to the extent it seeks information that is subject to the attorney-
17 client privilege or the attorney work product doctrine.

18 Subject to and without waiving the foregoing objections, GFI responds as follows:

19 <https://github.com/graphfoundation/ongdb/tree/3.5/enterprise>

20 <https://github.com/graphfoundation/ongdb/tree/3.5/integrationtests>

21 <https://github.com/graphfoundation/ongdb/tree/3.5/packaging>

22 <https://github.com/graphfoundation/ongdb/tree/3.5/stresstests>

23 <https://github.com/graphfoundation/ongdb/tree/3.5/tools>.

24 **INTERROGATORY NO. 14:**

25 IDENTIFY each closed component in Neo4j Enterprise Edition version 3.5 that YOU contend
26 does not require a commercial license from Neo4j Sweden AB or Neo4j, Inc. to use, copy or distribute,
27 and explain the legal and factual basis for that contention.

1 **RESPONSE TO INTERROGATORY NO. 14:**

2 GFI incorporates by reference the Preliminary Statement, General Objections, and
3 Objections to Instructions and Definitions stated above.

4 GFI further objects to this interrogatory on the grounds that it seeks information that is
5 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI
6 further objects to this interrogatory on the grounds that its use of the term “closed component”
7 renders it vague, ambiguous and unintelligible. GFI further objects to this interrogatory to the
8 extent it seeks information that is subject to the attorney-client privilege, the attorney work
9 product doctrine, or some other doctrine or privilege,

10 Subject to and without waiving the foregoing objections, GFI responds as follows:
11 The following are open source under AGPLv3 as to which no separate license from Neo4j, Inc. or
12 Neo4j Sweden AB are required under the terms of AGPLv3:

13 <https://github.com/graphfoundation/ongdb/tree/3.5/enterprise>

14 <https://github.com/graphfoundation/ongdb/tree/3.5/integrationtests>

15 <https://github.com/graphfoundation/ongdb/tree/3.5/packaging>

16 <https://github.com/graphfoundation/ongdb/tree/3.5/stresstests>

17 <https://github.com/graphfoundation/ongdb/tree/3.5/tools>.

18 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 14:**

19 GFI incorporates by reference the Preliminary Statement, General Objections, and
20 Objections to Instructions and Definitions stated above.

21 GFI further objects to this interrogatory on the grounds that it seeks information that is
22 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI
23 further objects to this interrogatory on the grounds that its use of the term “closed component”
24 renders it vague, ambiguous and unintelligible. GFI further objects to this interrogatory to the
25 extent it seeks information that is subject to the attorney-client privilege, the attorney work
26 product doctrine, or some other doctrine or privilege,

27 Subject to and without waiving the foregoing objections, GFI responds as follows:
28

The following are open source under AGPLv3 as to which no separate license from Neo4j, Inc. or Neo4j Sweden AB are required under the terms of AGPLv3:

<https://github.com/graphfoundation/ongdb/tree/3.5/enterprise>

<https://github.com/graphfoundation/ongdb/tree/3.5/integrationtests>

<https://github.com/graphfoundation/ongdb/tree/3.5/packaging>

<https://github.com/graphfoundation/ongdb/tree/3.5/stresstests>

<https://github.com/graphfoundation/ongdb/tree/3.5/tools>.

Attached as Exhibit 2 is a listing of the responsive Neo4j Enterprise Edition 3.5 files.

INTERROGATORY NO. 15:

IDENTIFY each person or entity that offers or provides support services for end users of ONgDB software.

RESPONSE TO INTERROGATORY NO. 15:

GFI incorporates by reference the Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above.

GFI further objects to this interrogatory on the grounds that it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI further objects to this interrogatory on the ground that its use of the term “offers or provides support services” renders it vague, ambiguous and unintelligible. GFI further objects to this request to the extent it seeks information that is publicly available and equally available to Plaintiff as GFI. GFI further objects to this interrogatory to the extent it seeks information that is subject to the attorney-client privilege or the attorney work product doctrine.

Subject to and without waiving the foregoing objections, GFI responds as follows: There are entities that, independent from GFI, provide services to users of ONgDB. The identification of those entities and the nature of the services they provide is available through an internet search that can be conducted by Plaintiff as easily as by GFI.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 15:

GFI incorporates by reference the Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above.

GFI further objects to this interrogatory on the grounds that it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI further objects to this interrogatory on the ground that its use of the term “offers or provides support services” renders it vague, ambiguous and unintelligible. GFI further objects to this request to the extent it seeks information that is publicly available and equally available to Plaintiff as GFI. GFI further objects to this interrogatory to the extent it seeks information that is subject to the attorney-client privilege or the attorney work product doctrine.

Subject to and without waiving the foregoing objections, GFI responds as follows: There are entities that, independent from GFI, provide services to users of ONgDB. The identification of those entities and the nature of the services they provide is available through an internet search that can be conducted by Plaintiff as easily as by GFI. GFI knows of the following entities that provide services to users of ONgDB: GrapheneDB, AtomRain, GraphGrid, iGov.

INTERROGATORY NO. 16:

IDENTIFY all support documentation for Open Native Graph Database (ONgDB) that YOU have published, provided or made available either directly or via a hotlink on YOUR website to users of ONgDB, and the source, author(s), the copyright holder of such documentation and any permission or license giving YOU the right to use such documentation.

RESPONSE TO INTERROGATORY NO. 16:

GFI incorporates by reference the Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above.

GFI further objects to this interrogatory on the grounds that it seeks information that it is unduly burdensome and oppressive in that it seeks information that is equally available to Plaintiff. GFI further objects to this interrogatory to the extent it seeks information that is subject to the attorney-client privilege or the attorney work product doctrine.

Subject to and without waiving the foregoing objections, GFI responds as follows: All documentation is available on The Graph Foundation site (<https://graphfoundation.org/projects/ongdb>), GitHub account (<https://github.com/graphfoundation>) and Docker Hub account

1 (<https://hub.docker.com/r/graphfoundation/ongdb>).

2 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 16:**

3 GFI incorporates by reference the Preliminary Statement, General Objections, and
4 Objections to Instructions and Definitions stated above.

5 GFI further objects to this interrogatory on the grounds that it seeks information that it is
6 unduly burdensome and oppressive in that it seeks information that is equally available to
7 Plaintiff. GFI further objects to this interrogatory to the extent it seeks information that is subject
8 to the attorney-client privilege or the attorney work product doctrine.

9 Subject to and without waiving the foregoing objections, GFI responds as follows: All
10 documentation is available on The Graph Foundation site
11 (<https://graphfoundation.org/projects/ongdb>), GitHub account
12 (<https://github.com/graphfoundation>) and the specific page
13 (<https://github.com/graphfoundation/ongdb/wiki/ONgDB-3.6-Docs>) and Docker Hub account
14 (<https://hub.docker.com/r/graphfoundation/ongdb>).

15 **INTERROGATORY NO. 17:**

16 IDENTIFY all material facts and DOCUMENTS that support YOUR Unclean Hands defense
17 asserted in YOUR Amended Answer, and the five persons most knowledgeable regarding such facts
18 and DOCUMENTS.

19 **RESPONSE TO INTERROGATORY NO. 17:**

20 GFI incorporates by reference the Preliminary Statement, General Objections, and
21 Objections to Instructions and Definitions stated above.

22 GFI further objects to this interrogatory on the grounds that it is a premature contention
23 interrogatory. GFI has not completed its discovery in this matter and has not received the
24 productions by Plaintiff in the related matter. GFI further objects to this interrogatory to the extent
25 it seeks information that is subject to the attorney-client privilege, the attorney work product
26 doctrine, and any other privilege.

27 Subject to and without waiving the foregoing objections, GFI responds as follows: GFI is
28 informed and believes, based on the allegations of the Answers and the Counterclaim filed in the

1 *Neo4j, Inc. v. PureThink, LLC* action that has been related to this action, that because Plaintiff
 2 cannot lawfully operate a dual license model since the open source is based on GPL or AGPL,
 3 Plaintiff resorts to sharp and false practices with customers (lying about the difference between the
 4 commercial versions and the open source version) attempting to restrict partners from supporting
 5 the open source Neo4J version with unlawful restrictions and interfering in attempts to use open
 6 source Neo4J software. GFI's discovery is continuing.

7 **INTERROGATORY NO. 18:**

8 IDENTIFY all material facts and DOCUMENTS that support YOUR Fair Use of Trademarks
 9 affirmative defense asserted in YOUR Amended Answer, and the five persons most knowledgeable
 10 regarding such facts and DOCUMENTS.

11 **RESPONSE TO INTERROGATORY NO. 18:**

12 GFI incorporates by reference the Preliminary Statement, General Objections, and
 13 Objections to Instructions and Definitions stated above.

14 GFI further objects to this interrogatory on the grounds that its use of the term "all material
 15 facts and DOCUMENTS concerning" renders it vague, ambiguous, and unintelligible. GFI further
 16 objects to this interrogatory on the grounds that it is overbroad, unduly burdensome and
 17 oppressive in that it apparently asks GFI to identify every instance of its use of Plaintiff's
 18 trademarks and then provide an analysis of why the use is a fair use. In the absence of Plaintiff's
 19 identification of a particular use of its trademark by GFI that Plaintiff contends is an infringement
 20 not subject to GFI's fair use defense, GFI is unable to present specific facts relative to any
 21 particular use. GFI further objects to this interrogatory to the extent it seeks information that is
 22 subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

23 Subject to and without waiving the foregoing objections, GFI responds as follows: GFI's
 24 only uses of Plaintiff's trademarks were and are nominative fair uses to (a) identify a software
 25 product called Neo4j that is freely available as open source software and (b) comparative
 26 advertising.

INTERROGATORY NO. 19:

IDENTIFY each and every NEO4J SOFTWARE file that YOU modified, altered, deleted, or added copyright management information, each such modification, alteration, deletion and addition, and the five (5) persons most knowledgeable about such acts.

RESPONSE TO INTERROGATORY NO. 19:

GFI incorporates by reference the Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above.

GFI further objects to this interrogatory on the grounds that its use of the term “modified, altered, deleted or added copyright management information” renders the interrogatory vague, ambiguous, and unintelligible. GFI further objects to this interrogatory on the ground that, given the open source nature of ONgDB, its use of the term “YOU” renders it vague, ambiguous and unintelligible. GFI further objects to this interrogatory to the extent it seeks information that is subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

Subject to and without waiving the foregoing objections, GFI responds as follows: All source code changes and history are available on The Graph Foundation GitHub account (<https://github.com/graphfoundation>).

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 19:

GFI incorporates by reference the Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above.

GFI further objects to this interrogatory on the grounds that its use of the term “modified, altered, deleted or added copyright management information” renders the interrogatory vague, ambiguous, and unintelligible. GFI further objects to this interrogatory on the ground that, given the open source nature of ONgDB, its use of the term “YOU” renders it vague, ambiguous and unintelligible. GFI further objects to this interrogatory to the extent it seeks information that is subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

Subject to and without waiving the foregoing objections, GFI responds as follows: All source code changes and history are available on The Graph Foundation GitHub account (<https://github.com/graphfoundation>). Attached as Exhibit 3 is a listing of files of Neo4j software

1 files that were modified by either Brad Nussbaum of GFI or by other individuals who are
2 members of the ONgDB community (including, but not limited to, John Mark Suhy). The
3 modifications were primarily the removal of the Commons Clause from the AGPLv3 license in
4 accordance with the AGPLv3 license conditions.

5 **INTERROGATORY NO. 20:**

6 For each version of Open Native Graph Database (ONgDB), IDENTIFY all source code by file
7 name and all lines therein that either YOU or a contributor has authored which YOU contend
8 differentiates Open Native Graph Database (ONgDB) as a “fork” from original NEO4j® source code.

9 **RESPONSE TO INTERROGATORY NO. 20:**

10 GFI incorporates by reference the Preliminary Statement, General Objections, and
11 Objections to Instructions and Definitions stated above.

12 GFI further objects to this interrogatory on the grounds that it seeks information that is
13 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI
14 further objects to this request on the grounds that its use of the terms “differentiates” and “fork”
15 renders the interrogatory vague, ambiguous and unintelligible. GFI further objects to this
16 interrogatory on the grounds that its use of source the term “original Neo4j^(R) code” renders it
17 vague, ambiguous and unintelligible and does not accurately describe the Neo4j open source code
18 that has been licensed under the GPL. GFI further objects to this interrogatory to the extent it
19 seeks information that is subject to the attorney-client privilege, the attorney work product
20 doctrine, or any other privilege.

21 Subject to and without waiving the foregoing objections, GFI responds as follows: All
22 source code changes and history are available on The Graph Foundation GitHub account
23 (<https://github.com/graphfoundation>).

1 Dated: May 28, 2020 BERGESON, LLP

2
3 By:  _____

4 Attorneys for Defendant
5 GRAPH FOUNDATION, INC.
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VERIFICATION

I, Brad Nussbaum, declare under penalty of perjury under the laws of the United States that I am the CEO at Graph Foundation, Inc. (“GFI”), that I have read the foregoing GRAPH FOUNDATION, INC.’S SUPPLEMENTAL OBJECTIONS AND RESPONSES TO NEO4J, INC.’S FIRST SET OF INTERROGATORIES, that the statements of facts contained therein, are within my personal knowledge or based upon information provided by other persons at GFI or business records of GFI, that the foregoing Responses are true and correct, and that I am authorized to sign this verification on behalf of GFI.

Executed on May 27, 2020, at Wooster, Ohio.

A handwritten signature in black ink, appearing to read "Brad Nussbaum", is written over a horizontal line.

Brad Nussbaum

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Santa Clara, State of California. My business address is 111 N. Market Street, Suite 600, San Jose, CA 95113.

On May 28, 2020, I served true copies of the following document(s) described as **GRAPH FOUNDATION, INC.'S SUPPLEMENTAL OBJECTIONS AND RESPONSES TO NEO4J, INC.'S FIRST SET OF INTERROGATORIES** on the interested parties in this action as follows:

***Attorneys for Plaintiff
NEO4J, INC.***

John V. Picone III, Esq.
Jeffrey M. Ratinoff, Esq.
Cary Chien, Esq.
HOPKINS & CARLEY
A Law Corporation
The Letitia Building
70 South First Street
San Jose, CA 95113-2406
jpicone@hopkinscarley.com
jratinoff@hopkinscarley.com
cchien@hopkinscarley.com

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address emtofelogo@be-law.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 28, 2020, at San Jose, California.



Emma Tofelogo-Fernandez

Joint Chart to Joint Statement
Neo4j, Inc. Special Interrogatories, Set 1 to Graph Foundation, Inc.

Neo4j, Inc. Special Interrogatories, Set 1 to Graph Foundation, Inc.

Joint Chart to Joint Statement

Request	Response	Neo4J Proposal	GFI Proposal	For Court's Use
INTERROGATORY NO. 2: IDENTIFY all material facts and DOCUMENTS concerning the conception, creation, and development of Open Native Graph Database (ONgDB), and the five (5) persons most knowledgeable about such facts.	<p>GFI incorporates by reference the Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above.</p> <p>GFI further objects to this interrogatory on the grounds that it is vague, ambiguous, unintelligible, overbroad and unduly burdensome. GFI further objects to this interrogatory on the grounds that its use of the term “all material facts and DOCUMENTS concerning” renders it vague, ambiguous, and unintelligible. GFI further objects to this request on the grounds that its use of the term “development” in the context of ONgDB renders the interrogatory vague, ambiguous and unintelligible. GFI further objects to this interrogatory to the extent it seeks information that is subject to the attorney-client privilege, the attorney work product doctrine, or some other privilege.</p> <p>Subject to and without waiving the foregoing objections, GFI responds that individuals with knowledge of ONgDB are Brad Nussbaum and Ben Nussbaum.</p>	<p>Neo4j proposes that GFI amend its responses to provide full, unevasive, and complete responses from all sources within its control. To the extent GFI does not possess any additional responsive information, it must state, via declarations from the CEO of GFI, Brad Nussbaum, that he has conducted a diligent search and reasonable inquiry, including the sources and custodians they sought information from, and that he has no knowledge of the information sought by the request.</p> <p><i>See Fresenius Medical Care Holding Inc. v. Baxter International, Inc.</i>, 224 F.R.D. 644, 651 (N.D. Cal. 2004) (“When responding to interrogatories, a party has a duty to respond with all the information under its custody and control.”)</p>	<p>ROG 2’s request for a statement of “all material facts and documents” concerning the entirety of the development of ONgDB (which, according to Neo4j, is asking GFI to provide all the information it has regarding the development of ONgDB) is unintelligible, overbroad, and not an appropriate interrogatory. GFI proposes that Neo4j notice a deposition of GFI’s person most knowledgeable with respect to the development of ONgDB so Neo4j can ask whatever specific questions it has with respect to the development of the software.</p>	
INTERROGATORY NO.	GFI incorporates by reference the	Same proposal as Interrogatory	GFI has responded	

Neo4j, Inc. Special Interrogatories, Set 1 to Graph Foundation, Inc.

Joint Chart to Joint Statement

Request	Response	Neo4J Proposal	GFI Proposal	For Court's Use
5: IDENTIFY all material facts concerning John Mark Suhy's role in the inception, formation and operation of Graph Foundation, Inc.	Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above. GFI further objects to this interrogatory on the grounds that it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI further objects to this interrogatory on the ground that its use of the terms "all material facts" and "role" renders it vague, ambiguous and unintelligible. GFI further objects to this interrogatory to the extent it seeks information that is subject to the attorney-client privilege or the attorney work product doctrine. Subject to and without waiving the foregoing objections, GFI responds as follows: None.	No. 2.	to ROG 5. Neo4j's disagreement with GFI's response is not an appropriate basis for a motion to compel. GFI proposes that Neo4j take the deposition of the person most knowledgeable at GFI regarding its inception, formation and operation and ask any questions Neo4j may have with respect to Mr. Suhy. Neo4j can also depose Mr. Suhy himself.	
INTERROGATORY NO. 6: IDENTIFY all material facts concerning YOUR relationship with iGov Inc. and all DOCUMENTS reflecting or governing that relationship, including all oral or written agreements.	GFI incorporates by reference the Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above. GFI further objects to this interrogatory on the grounds that it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible	Same proposal as Interrogatory No. 2. Specifically, iGov is listed as a "Targeted Sponsor" on GFI's website. At a minimum, this information is responsive.	Donor privacy rights are based on the Constitutional right of freedom of association and should be maintained in the absence of an overriding governmental	

Neo4j, Inc. Special Interrogatories, Set 1 to Graph Foundation, Inc.

Joint Chart to Joint Statement

Request	Response	Neo4J Proposal	GFI Proposal	For Court's Use
	<p>evidence. GFI further objects to this interrogatory on the ground that its use of the terms “all material facts” and “relationship” renders it vague, ambiguous and unintelligible. GFI further objects to this interrogatory to the extent it includes being a donor to GFI a “relationship” on the grounds that information about GFI’s donors are subject to the donors’ right of privacy and are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI will not provide information identifying donors in response to any interrogatory. GFI further objects to this interrogatory to the extent it seeks information that is subject to the attorney-client privilege or the attorney work product doctrine.</p> <p>Subject to and without waiving the foregoing objections, GFI responds as follows: None.</p>		<p>interest. <i>See, e.g., Ctr. for Competitive Politics v. Harris</i>, 784 F.3d 1307, 1317 (9th Cir. 2015). GFI has responded to this and similar interrogatories with respect to any relationship outside of a donor relationship. Neo4j has not explained why donor relationships are relevant to its trademark claims.</p>	
<p>INTERROGATORY NO. 7: IDENTIFY all material facts concerning YOUR relationship with GraphGrid, Inc. and all DOCUMENTS reflecting or governing that</p>	<p>GFI incorporates by reference the Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above. GFI further objects to this interrogatory on the grounds that it seeks information that is irrelevant and not reasonably calculated to lead</p>	<p>Same proposal as Interrogatory No. 2. Specifically, GraphGrid is listed as a “Financial Sponsor” on GFI’s website. At a minimum, this information is responsive.</p>	<p>Donor privacy rights are based on the Constitutional right of freedom of association and should be maintained in the absence of an</p>	

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relationship, including all oral or written agreements.	<p>to the discovery of admissible evidence. GFI further objects to this interrogatory on the ground that its use of the terms “all material facts” and “relationship” renders it vague, ambiguous and unintelligible. GFI further objects to this interrogatory to the extent it includes being a donor to GFI a “relationship” on the grounds that information about GFI’s donors are subject to the donors’ right of privacy and are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI will not provide information identifying donors in response to any interrogatory. GFI further objects to this interrogatory to the extent it seeks information that is subject to the attorney-client privilege or the attorney work product doctrine. Subject to and without waiving the foregoing objections, GFI responds as follows:</p> <p>GraphGrid, Inc. provides web hosting and cloud services for the GFI website and binary distribution. The documentation was GFI’s signing up through the GraphGrid, Inc. website:</p>		<p>overriding governmental interest. <i>See, e.g., Ctr. for Competitive Politics v. Harris</i>, 784 F.3d 1307, 1317 (9th Cir. 2015). GFI has responded to this and similar interrogatories with respect to any relationship outside of a donor relationship. Neo4j has not explained why donor relationships are relevant to its trademark claims.</p>	

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	https://go.graphgrid.com . A copy of GraphGrid, Inc.'s Customer Agreement which governs its customer relationships and which is available at raphgrid.com/agreement/ is attached hereto as Exhibit 1.			
INTERROGATORY NO. 10: IDENTIFY each person and entity who download a copy of Open Native Graph Database (ONgDB) software, the version number, the person or entity who downloaded it, and IP Address for each such download.	<p>GFI incorporates by reference the Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above.</p> <p>GFI further objects to this request on the grounds that it is overbroad, unduly burdensome and oppressive. GFI further objects to this request on the grounds that it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.</p> <p>Subject to and without waiving the foregoing objections, GFI responds as follows: GFI does not collect or maintain the information sought in this interrogatory.</p>	GFI produced documents showing discussion with customers of ONgDB. At a minimum, the identity of these customers are responsive.	GFI does not have the information requested in ROG 10. Communications with individuals that Neo4j styles as "customers" does not provide the information requested in this interrogatory. The information GFI has with respect to the number of downloads is from a third-party website, not GFI's own records.	
INTERROGATORY NO. 11: IDENTIFY each and every charitable donation and contribution made to Graph	GFI incorporates by reference the Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above.	<p>Same proposal as Interrogatory No. 2.</p> <p>This information is relevant to Neo4j's trademark infringement,</p>	Donor privacy rights are based on the Constitutional right of freedom of association and	

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Foundation, Inc., including the nature and type of donation (i.e., money, goods, services, personal property, real property, intellectual property, source code, vehicles, clothes, household items), the amount of the donation, the fair market value ascribed to the donation, the date of the donation, and the person or entity who made each such donation.	GFI further objects to this interrogatory on the grounds that it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI further objects to this request on the grounds that it seeks information that is subject to the right of privacy GFI's donors. Based on these objections, GFI will not provide any information in response to this interrogatory.	<p>false designation, and unfair competition claims as they will reflect the nature of each sponsor's support of GFI, which Neo4j contends includes misappropriation Neo4j's brand through financial and in-kind support. Neo4j is entitled to discovery relevant to its claims and GFI's response will be protected by the Protective Order.</p> <p>"General concerns of privacy are insufficient to justify the refusal to answer Plaintiff's discovery requests." <i>Garraway v. Ciufo</i>, 2020 WL 1263562, at *8 (E.D. Cal. Mar. 16, 2020). And, any legitimate concerns about donor privacy can be sufficiently protected by the dissemination restrictions offered by the Protective Order in this case. <i>See Oakes v. Halvorsen Marine Ltd.</i>, 179 F.R.D. 281, 284 (C.D. Cal. 1998) Further, business entities do not enjoy same privacy rights as individuals, and doubts as to relevance should generally be resolved in favor of permitting discovery. <i>See KFD</i></p>	should be maintained in the absence of an overriding governmental interest. <i>See, e.g., Ctr. for Competitive Politics v. Harris</i> , 784 F.3d 1307, 1317 (9th Cir. 2015). GFI has responded to this and similar interrogatories with respect to any relationship outside of a donor relationship. Neo4j has not explained why donor relationships are relevant to its trademark claims. Its argument that support of GFI supports GFI's alleged trademark infringement does not provide an explanation as to why donor information is relevant.	

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		<i>Enterprises, Inc. v. City of Eureka</i> , 2010 WL 11484695, at *6 (N.D. Cal. Nov. 12, 2010).		
INTERROGATORY NO. 13: IDENTIFY each source code file in each version of Open Native Graph database (ONgDB) that YOU contend is covered by the GNU Affero General Public License (AGPL) version 3.	<p>GFI incorporates by reference the Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above.</p> <p>GFI further objects to this interrogatory on the grounds that it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. GFI further objects to this interrogatory to the extent it seeks information that is subject to the attorney client privilege or the attorney work product doctrine.</p> <p>Subject to and without waiving the foregoing objections, GFI responds as follows:</p> <p>https://github.com/graphfoundation/ongdb/tree/3.5/enterprise</p> <p>https://github.com/graphfoundation/ongdb/tree/3.5/integrationtests</p> <p>https://github.com/graphfoundation/ongdb/tree/3.5/packaging</p>	<p>Neo4j proposes that GFI amend its responses to provide full, unevasive, and complete response to include actual source code file names. Its current response referring to Internet links containing voluminous webpages is evasive and incomplete.</p> <p>GFI has a duty to review and provide this information under its control and it can do so in ways that Neo4j cannot, and GFI can do so efficiently. <i>T.N. Taube Corp. v. Marine Midland Mortg. Corp.</i>, 136 FRD 449, 454 (WD NC 1991) (responding party's familiarity with its records and methods of organization would facilitate review of records in ways unavailable to opposing party).</p>	<p>What Neo4j describes as links to voluminous webpages are actually links to pages containing the very source code files that are responsive to this interrogatory. GFI could print out each webpage and produce the pages listing the source code files, but that is something Neo4j is just as able to do.</p>	

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	https://github.com/graphfoundation/ongdb/tree/3.5/stresstests https://github.com/graphfoundation/ongdb/tree/3.5/tools .			
INTERROGATORY NO. 16: IDENTIFY all support documentation for Open Native Graph Database (ONgDB) that YOU have published, provided or made available either directly or via a hotlink on YOUR website to users of ONgDB, and the source, author(s), the copyright holder of such documentation and any permission or license giving YOU the right to use such documentation.	<p>GFI incorporates by reference the Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above.</p> <p>GFI further objects to this interrogatory on the grounds that it seeks information that it is unduly burdensome and oppressive in that it seeks information that is equally available to Plaintiff. GFI further objects to this interrogatory to the extent it seeks information that is subject to the attorney-client privilege or the attorney work product doctrine.</p> <p>Subject to and without waiving the foregoing objections, GFI responds as follows: All documentation is available on The Graph Foundation site (https://graphfoundation.org/projects/ongdb), GitHub account (https://github.com/graphfoundation) and the specific page (https://github.com/graphfoundation/ongdb/wiki/ONgDB-3.6-Docs) and</p>	Same proposal as Interrogatory No. 2. Specifically, GFI's response is incomplete as it did not answer who the author(s) and copyright holders of the documentation were, and what permission, if any, GFI was given to use the documentation.	GFI's response to ROG 16 provides links to all of the documentation responsive to this interrogatory. The specific page link to the wiki page that contains the information that has been developed over time with community involvement provides a complete history of the development of the documentation. As the documentation is on a wiki page, the inquiries regarding "author", "copyright" and "license" are not applicable.	

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	Docker Hub account (https://hub.docker.com/r/graphfoundation/ongdb).			
INTERROGATORY NO. 17: IDENTIFY all material facts and DOCUMENTS that support YOUR Unclean Hands defense asserted in YOUR Amended Answer, and the five persons most knowledgeable regarding such facts and DOCUMENTS.	<p>GFI incorporates by reference the Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above.</p> <p>GFI further objects to this interrogatory on the grounds that it is a premature contention interrogatory. GFI has not completed its discovery in this matter and has not received the productions by Plaintiff in the related matter. GFI further objects to this interrogatory to the extent it seeks information that is subject to the attorney-client privilege, the attorney work product doctrine, and any other privilege.</p> <p>Subject to and without waiving the foregoing objections, GFI responds as follows: GFI is informed and believes, based on the allegations of the Answers and the Counterclaim filed in the <i>Neo4j, Inc. v. PureThink, LLC</i> action that has been related to this action, that because Plaintiff cannot lawfully operate a dual license model since the open source is based on GPL or</p>	<p>Neo4j is entitled to a full and complete response based on information that GFI obtained through a reasonable inquiry. Instead, GFI admittedly has only copied allegations from the Related Case without any independent knowledge of the underlying facts. If GFI has no independently derived facts, it should say so and drop the affirmative defense.</p> <p>See FRCP 33(a)(2) (a party may be required to state its contentions relating to “fact or the application of law to fact”); see also <i>Essex Ins. Co. v. Interstate Fire & Safety Equip. Co./Interstate Fire & Safety Cleaning Co.</i>, 263 F.R.D. 72, 75 (D. Conn. 2009).</p> <p>GFI also fails to identify any documents or person(s) with knowledge that support its defenses. This too falls short of what is requested.</p>	<p>GFI has not had the opportunity to conduct discovery with respect to the practices of Neo4j that are alleged in this affirmative defense. Pursuant to FRCP 33(a)(2), GFI should be permitted to conduct that discovery and then supplement its interrogatory response. Further, there is no rule that prevents GFI from relying on the allegations in the Related Case as the basis for its allegations as to this defense.</p>	

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	AGPL, Plaintiff resorts to sharp and false practices with customers (lying about the difference between the commercial versions and the open source version) attempting to restrict partners from supporting the open source Neo4J version with unlawful restrictions and interfering in attempts to use open source Neo4J software. GFI's discovery is continuing.			
INTERROGATORY NO. 18: IDENTIFY all material facts and DOCUMENTS that support YOUR Fair Use of Trademarks affirmative defense asserted in YOUR Amended Answer, and the five persons most knowledgeable regarding such facts and DOCUMENTS.	<p>GFI incorporates by reference the Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above.</p> <p>GFI further objects to this interrogatory on the grounds that its use of the term "all material facts and DOCUMENTS concerning" renders it vague, ambiguous, and unintelligible. GFI further objects to this interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive in that it apparently asks GFI to identify every instance of its use of Plaintiff's trademarks and then provide an analysis of why the use is a fair use. In the absence of Plaintiff's identification of a particular use of its trademark by</p>	Same proposal as Interrogatory No. 17.	As stated in GFI's response to ROG 18, Neo4j has not identified which uses of the Neo4j trademark by GFI is outside of the fair use projection. Pursuant to FRCP 33(a)(2), GFI should be permitted to conduct the discovery necessary to determine what uses Neo4j contends are not fair use and, with that information, GFI will supplement its response to this interrogatory to	

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	<p>GFI that Plaintiff contends is an infringement not subject to GFI's fair use defense, GFI is unable to present specific facts relative to any particular use. GFI further objects to this interrogatory to the extent it seeks information that is subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.</p> <p>Subject to and without waiving the foregoing objections, GFI responds as follows: GFI's only uses of Plaintiff's trademarks were and are nominative fair uses to (a) identify a software product called Neo4j that is freely available as open source software and (b) comparative advertising.</p>		present specific facts supporting its fair use defense as to each alleged infringement.	
<p>INTERROGATORY NO. 20:</p> <p>For each version of Open Native Graph Database (ONgDB), IDENTIFY all source code by file name and all lines therein that either YOU or a contributor has authored which YOU contend</p>	<p>GFI incorporates by reference the Preliminary Statement, General Objections, and Objections to Instructions and Definitions stated above.</p> <p>GFI further objects to this interrogatory on the grounds that it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible</p>	Neo4j proposes that GFI amend its responses to provide full, unevasive, and complete response to include source code information that differentiates GFI's product from Neo4j's. Its current response referring to a Internet link containing the entirety of GFI's source code is evasive.	All of the history of changes to ONgDB code are available on the referenced GitHub account. Requesting that GFI review and explain every change maed is unduly burdensome and	

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differentiates Open Native Graph Database (ONgDB) as a “fork” from original NEO4j® source code.	<p>evidence. GFI further objects to this request on the grounds that its use of the terms “differentiates” and “fork” renders the interrogatory vague, ambiguous and unintelligible. GFI further objects to this interrogatory on the grounds that its use of the term “original Neo4j(R) source code” renders it vague, ambiguous and unintelligible and does not accurately describe the Neo4j open source code that has been licensed under the GPL. GFI further objects to this interrogatory to the extent it seeks information that is subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.</p> <p>Subject to and without waiving the foregoing objections, GFI responds as follows: All source code changes and history are available on The Graph Foundation GitHub account (https://github.com/graphfoundation).</p>	GFI has a duty to review and provide this information under its control and it can do so in ways that Neo4j cannot, and GFI can do so efficiently. <i>T.N. Taube Corp. v. Marine Midland Mortg. Corp.</i> , 136 FRD 449, 454 (WD NC 1991) (responding party’s familiarity with its records and methods of organization would facilitate review of records in ways unavailable to opposing party).	oppressive as the development of ONgDB as an open source software product is not controlled by GFI. Neo4j had not explained why the information requested is relevant to its trademark infringement claims.	